



Department of Transportation

PASSENGER AND FREIGHT RAIL ASSISTANCE PROGRAM



PROGRAM GUIDELINES and APPLICATION INSTRUCTIONS

Summer 2023

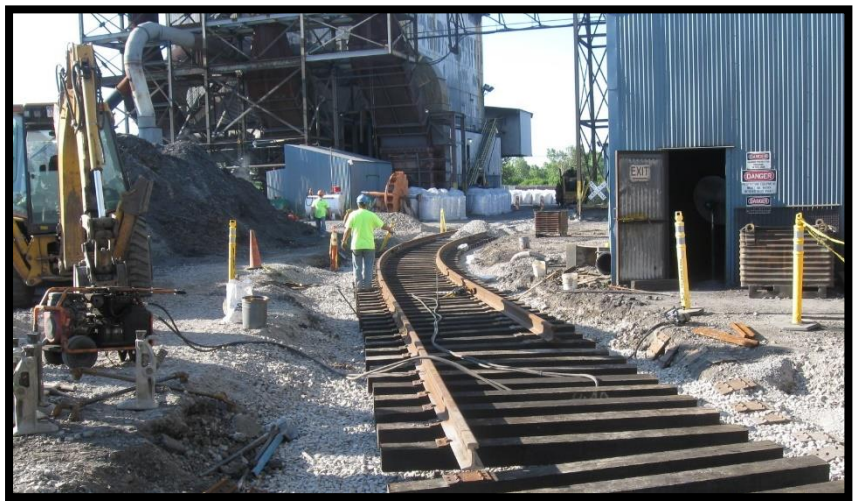
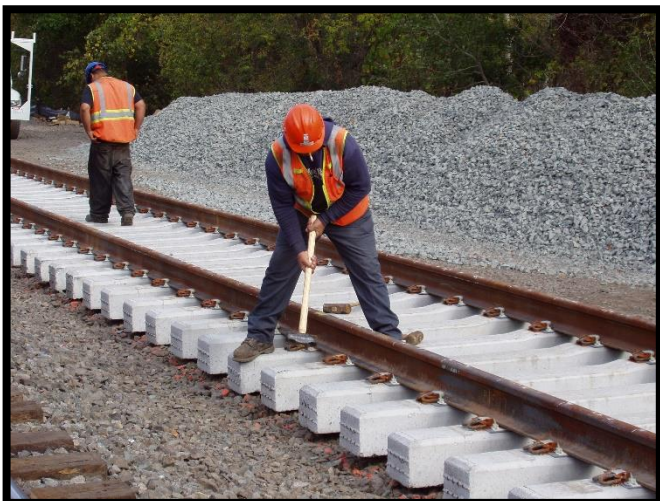


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Department of Transportation

PASSENGER AND FREIGHT RAIL ASSISTANCE PROGRAM (PFRAP)

INTRODUCTION:

The New York State Department of Transportation (NYSDOT) is soliciting candidate projects for the Passenger and Freight Rail Assistance Program (PFRAP) to provide funding opportunities for investments in the State's rail and port infrastructure.

Governor Kathy Hochul continues the policy of making significant investments in transportation infrastructure the cornerstone of New York's economic development blueprint. The Five-Year Transportation Capital Program continues this significant focus on the synergies among investment in transportation infrastructure, job creation and economic growth.

New York has long been recognized as the national leader in investing in our State's transportation infrastructure. This solicitation continues the State's unparalleled support by providing \$121.6 million in capital funding to maintain and modernize freight rail and port infrastructure across the State through the PFRAP program.

NYSDOT is committed to working with you to expedite the application and contract processes to ensure that the benefits of these State investments accrue to the manufacturers and suppliers that rely on the State's railroads and ports to get their raw materials and finished products to market.

This guidance will help applicants make informed decisions about their eligibility to apply and understand the program's requirements, the application process, project selection process, available funding, and required funding commitments.

Questions on the application process can be addressed to:

**Raymond F. Hessinger, P.E.
Freight & Passenger Rail Bureau
New York State Department of Transportation
50 Wolf Road, POD 5-4
Albany, New York 12232
(518) 457-8075 or rail@dot.ny.gov**

Questions regarding Grants Gateway can be addressed to:

Help Desk at (518) 474-5595 or GrantsGateway@its.ny.gov

AVAILABLE FUNDING:

NYSDOT is soliciting applications for and anticipates making awards of up to \$121.6 million in PFRAP funding.

The table below summarizes the funding available, its allowable uses and project service life requirements.

Funding Sources		Eligibility Requirements				
Amount Available (million)	Description	Freight Rail	Passenger & Tourist Rail	Port Infrastructure	Clean Diesel	Min Service Life (years)
\$31.7	Passenger Rail, Freight Rail & Port Program	✓	✓	✓	✓	10
\$83.1	Freight Rail Program	✓			✓	10
\$3.7	Statewide Clean Diesel Set-Aside				✓	10
\$3.0	LIRR Clean Diesel Set-Aside				✓	10
\$121.6	Total	\$114.8	\$31.7	\$31.7	\$121.6	

NYSDOT, at its sole discretion, may award less than the total \$121.6 million detailed above; or may allocate additional funds from prior years or programs as available.

REQUIREMENTS APPLICABLE TO THE PASSENGER AND FREIGHT RAIL ASSISTANCE PROGRAM (PFRAP):

LIMIT ON NUMBER OF APPLICATIONS SUBMITTED:

Applicants may submit up to four (4) PFRAP applications.

LIMIT ON THE SIZE OF AWARDS:

The maximum PFRAP award through this solicitation shall be \$10.0 million. Applications requesting a larger amount will be considered non-responsive.

LIMIT ON THE NUMBER OF AWARDS:

Applicants will be limited to three (3) PFRAP awards from this solicitation. NYSDOT will also limit the number of PFRAP projects awarded to affiliated companies to eight (8). Affiliated companies are those under common ownership or control.

ELIGIBLE APPLICANTS:

Any railroad company, any New York state agency, the federal government, the Canadian government, any other state or instrumentality thereof, any public authority of this or any other state, or any political subdivision or municipality of the state. All common-carrier, intercity passenger or tourist railroad corporations must be in good standing with NYSDOT at the time of application.

Railroads will be considered in good standing if they have submitted the most recent annual report (2021), as required by New York State Transportation Law §116, and have paid their annual rail safety fee (2021) in accordance with New York State Transportation Law §135 by the application deadline.

Other interested entities, such as shippers will need to partner with or have an eligible applicant submit the application and sponsor the project. An agreement between the organization and project applicant is required prior to project implementation.

GRANTS GATEWAY AND NOT-FOR-PROFIT PREQUALIFICATION REQUIREMENT

All not-for-profit organizations applying for or receiving state grant funds ***must*** be registered in Grants Gateway. In addition to being registered, all not-for-profit organizations applying for or receiving state grant funds ***must*** also be prequalified in Grants Gateway. More information regarding the prequalification process and Grants Gateway can be found on the [Grants Management Website](#).

Proposals received from not-for-profit applicants that have not Registered and are not Prequalified in the Grants Gateway on the proposal due date of October 6, 2023 cannot be evaluated. Such proposals will be disqualified from further consideration.

Not-for-Profit applicants are strongly encouraged to begin the registration and prequalification process as soon as possible in order to participate in this opportunity.

ELIGIBLE PROJECT TYPES:

Any capital improvement to freight, intercity passenger or tourist rail assets with a minimum service life of 10 years or greater, including but not limited to:

- track construction and rehabilitation,
- bridge construction and rehabilitation,
- elimination of clearance obstructions,
- yard, terminal and siding construction and rehabilitation,
- signal and train control systems,
- rolling stock acquisition and rehabilitation, and
- capital projects that will reduce carbon footprint of railroad facilities.

Any capital improvement for public port facilities outside the jurisdiction of the Port Authority of New York and New Jersey with a minimum service life of 10 years or greater, including but not limited to:

- Docks, bulkheads and wharf construction and reconstruction,
- Dredging,
- Material handling equipment or storage facilities,
- Internal roadways and rail lines, and
- Capital projects that will reduce carbon footprint of port facilities.

All projects must comply with the New York State Smart Growth Public Infrastructure Policy Act. Notwithstanding specific eligibility criteria identified above, in accordance with Article 6 of Environmental Conservation Law, NYSDOT cannot approve, undertake, support or finance a public infrastructure project, including grants, awards, loans, or other assistance programs, unless, to the extent practicable, it is consistent with the relevant Smart Growth Public Infrastructure Criteria. Refer to Appendix C for further guidance.

GENERAL CONDITIONS:

The program is authorized by Section 14 of NYS Transportation Law.

- Application and Award Limitation: The number of applications submitted is limited to four (4). **Applicants will be limited to a maximum of three (3) grants from this solicitation and affiliated companies will be limited to a maximum of eight (8) grants from this solicitation.**
- Funding Limitation: Upon award, the amount of the grant is fixed and the applicant will be responsible for any and all costs in excess of the grant amount. Applicants may request to adjust the scope of their project to fit within the funding available (including committed matching funds). NYSDOT reserves the right to approve or deny such requests at its sole discretion.
- Geographic Location: Projects must be located in New York State and to the extent practicable and feasible should consider impacts on Environmental Justice Communities.
- Environmental Review/Approval: All projects are subject to review in accordance with the

State Environmental Quality Review Act (SEQRA) (17 NYCRR Part 15 or 6 NYCRR Part 617). If the project includes Federal fund sources obtained independent of this solicitation, it is also subject to the National Environmental Policy Act (NEPA).

- Grant Program: The *Passenger and Freight Rail Assistance Program* is a reimbursement program. **Project grantees are required to pay all bills before requesting reimbursement.**
- Reimbursements: Reimbursements to the grantee will be made monthly or, more frequently if needed, when invoices exceed \$50,000.
- Match Requirements: There is no minimum match requirement; the Passenger & Freight Rail Assistance Program may fund up to 100% of project costs. Preference will be given to those applications that are able to provide a greater local share of total project costs. Work elements must be eligible for the PFRAP program to be considered for match. For example, if the project involves the construction of a factory with a rail spur, only the rail spur is eligible for the PFRAP funding. The project cost for the purposes of the application is limited to the cost of the rail spur. The use of funds and source of funds of the factory may be described in the application as Non-Participating but should not be included in the project estimate or considered as matching. The application will automatically calculate the percent match based on the Participating Source of Funds provided by the Applicant.
- Participating: Use of funds or source of funds that fall under the application project scope and what is being asked to be funded as part of this solicitation. Within the application funding tables the applicant should describe where the use of funding for the participating funds and the source of funds within the categories shown.
- Non-Participating: Use of funds or source of funds that may fall outside of the scope of the application but may be relevant to the project noted in the application. Non-Participating funds fall outside the scope of the application but may be relevant to the project on a larger scale.
- Project Scope: Successful projects will be selected based upon a competitive process. **Changes to the scope and intent of a project after selection may be considered at NYSDOT's sole discretion (and subject to executive, legislative and/or control agency review in accordance with the State Finance Law, where applicable) only where it can be clearly demonstrated by the applicant that the public benefits of the revised project will meet or exceed those of the original project as described in the application.**
- Maintenance and Service Commitments: For the PFRAP program, applicants must agree to provide service for the duration of the useful life of the capital project, which can vary depending on the type of improvement. Projects funded by the PFRAP program require the grantee to operate and maintain the improvement for a minimum of 10 years after the project has been accepted by NYSDOT as complete.
- Eligible Costs: Work elements eligible for reimbursement will conform to 23 CFR Part 140 Subpart I – Reimbursement for Railroad Work, and include: engineering, construction management, site preparation; preparation of designs, plans, specifications, estimates, environmental impact statements, appraisals and surveys; and the acquisition of real property. The net salvage value of materials recovered must be included in the estimate as a credit against project costs. Project expenses incurred prior to execution of the agreement by the

Office of the State Comptroller are not eligible for reimbursement by the State and cannot be counted towards project matching funds.

- Contracting: Applicants must comply with applicable New York State procurement rules and regulations. Successful applicants will be required to submit a current New York State Vendor Responsibility Form. See http://www.osc.state.ny.us/vendrep/vendor_index.htm.
- Professional Services: The NYSDOT will consider proposals to perform engineering by consultant or force account. Consultant services are to be obtained as a result of a competitive, qualifications-based selection process.
- Construction: The NYSDOT will consider proposals to perform construction by contractor or force account.
- Project Administration: Projects will be managed in accordance with the following NYSDOT documents and procedures:
 - [Manual of Construction Supervision and Inspection Procedures for Railroad Let Projects](#);
 - [Manual of Construction Supervision and Inspection Procedures for Work by Railroad Force Account](#);
 - [Manual of Billing Procedure for Submission of Rail Project Payment Vouchers to NYSDOT](#);
 - [Manual of Uniform Record Keeping \(MURK\)](#).
- Proprietary Information: Careful consideration should be given before confidential business information is submitted to NYSDOT as part of your application. Review should include whether it is critical for evaluating an application and whether general, non-confidential information may be adequate for review purposes. The NYS Freedom of Information Law, Public Officers Law, Article 6, provides for public access to information NYSDOT possesses. Public Officers Law, Section 87(2)(d) provides for exemptions to disclosure for records or portions thereof that “are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which, if disclosed, would cause substantial injury to the competitive position of the subject enterprise.” Information submitted to NYSDOT that the applicant wishes to have treated as proprietary and/or trade secret information should be identified and labeled “Confidential” or “Proprietary” on each page at the time of disclosure. This information should include a written request to exempt it from disclosure, including a written statement of the reasons why the information should be exempted. However, NYSDOT cannot guarantee the confidentiality of any information submitted.
- Limitation: This solicitation does not commit NYSDOT to award a contract, pay any costs incurred in preparing an application, or procure or contract for services or supplies. NYSDOT reserves the right to accept or reject any or all proposals received, to negotiate with all qualified applicants, or to cancel in part or in its entirety the solicitation when it is in NYSDOT’s best interest.
- Title VI Assurances: The New York State Department of Transportation, in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation and Title 23 Code of Federal Regulations, Part 200, Title VI Program and Related Statutes, as amended, issued pursuant to such Act, hereby notifies all who respond

to a written Department solicitation, request for proposal or invitation to bid that it will affirmatively ensure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, national origin, sex, age, disability/handicap and income status in consideration for an award.

CIVIL RIGHTS REQUIREMENTS:

Work performed by consultants and contractors will be subject to Minority and Women's Business Enterprise goals and reporting requirements as further described in Section 2.10 and Appendix B of the attached sample PFRAP grant agreement. See Appendix E.

APPLICATION EVALUATION CRITERIA AND SELECTION PROCESS:

The NYSDOT will initially screen the applications for eligibility as follows:

- Applicant: Is the applicant eligible to apply for funds from the program? (See Page 7)
- Project Scope: Is the proposed project an intercity passenger, freight or tourist rail, clean diesel or port project eligible for funding from the program? (See Page 8)
- Project Location: Is the proposed project located within the State of New York?
- Smart Growth: Is the proposed project consistent with the Smart Growth Public Infrastructure Criteria or has the applicant submitted justification for non-compliance which can be adopted by NYSDOT?
- Project Service Life: Can the proposed project be reasonably expected to obtain the required minimum service life of 10 years?

Applications which do not meet the eligibility criteria listed above will not be scored.

Following the initial screening, the eligible project applications will be scored by a team of independent reviewers against the evaluation factors contained below. Each evaluation factor is rated on a scale of 0 to 5, and then weighted to establish the maximum points available for each factor.

APPLICATION EVALUATION FACTORS	Max Points
Vision The project will be evaluated for its ability to further the achievement of the Vision, Goals, Objectives and Strategies for Rail and Port Service in New York established in the 2009 New York State Rail Plan.	5
Process The project will be evaluated on the level of public outreach and stakeholder involvement, as evidenced by: <ul style="list-style-type: none">• Consistency with the Strategic Plan of the Regional Economic Development Council (REDC) in whose Region(s) the project is located;	20

<ul style="list-style-type: none"> • Consistency with any plan adopted by the Municipality(ies) in which the project is located; • Project-specific public and stakeholder outreach, including letters of support; and • Coordination of the project with other private and public investments. 	
<p>Strategies</p> <p>The project will be evaluated against the strategies in the State Rail Plan (SRP), the REDC Strategic Plan, listing in Appendix B of the SRP, and consistent with the goals in the Climate Leadership and Community Protection Act (CLCPA) on the following scale:</p> <ul style="list-style-type: none"> • Highly Recommended; • Recommended; • Neutral; • Not Recommended. 	25
<p>Implementation</p> <ul style="list-style-type: none"> • Applicant history with prior NYSDOT grants, as evidenced by: <ul style="list-style-type: none"> ○ Were prior projects progressed in a timely fashion? ○ Were prior projects progressed in accordance with NYSDOT procedures? • Project Priority as indicated by the Applicant. 	10
<p>Leverage Resources</p> <ul style="list-style-type: none"> • Applicant share as a percentage match. 	15
<p>Performance Measures</p> <ul style="list-style-type: none"> • Project's Public Benefit / Cost Ratio • The quality of the supporting public benefit cost analysis will be evaluated on the following scale: <ul style="list-style-type: none"> ○ Very Useful, ○ Useful, ○ Marginally Useful, ○ Not Useful. 	25

Upon completion of the application evaluation and scoring phase, applications will be ranked in order of their score. The NYSDOT will then proceed to select projects for funding, considering each project in score order from highest to lowest, adding projects to the recommended list until the available funding is exhausted, unless:

- (1) The applicant had two (2) higher ranked projects already added to the program;
- (2) Corporate affiliates of the applicant had three (3) higher ranked projects already added to the program;
- (3) Inclusion of the project in the program would result in a fiscally unconstrained program (i.e. total of all project awards would exceed the total funding available for award);
- (4) Inclusion of the project in the program would exceed the amount of funding available for a particular type of project based on the appropriation language (i.e. total of all port project awards would exceed the amount of funds available for port projects); or
- (5) There was an overriding factor or policy consideration, not otherwise accommodated in the scoring process.

In the event of a tie score, not otherwise differentiated by the factors above, NYSDOT, in its sole discretion, will select a project for funding based on considerations of geographic distribution of funds across the state and project schedule.

APPLICATION FORM:

Application materials are available for download from NYSDOT's web site at: www.dot.ny.gov/railgrants

A complete PFRAP application will consist of the 2023 Project Funding Application with all required fields completed and the following required attachments:

- Benefit / Cost Ratio calculations,
- Detailed Project Estimate,
- Project Location Map, and
- Equal Opportunity Policy Statement.

Depending on the specifics of your application, you may also be required to submit:

- Maintenance obligation correspondence from property owner;
- SEQRA and NEPA Records of Decision (if available).

You may submit additional supporting documents, such as:

- Photographs;
- Inspection Reports;
- Engineering or Environmental Reports;
- Plans and Drawings;
- Letters of Support.

Attached files should be of common business formats such as PDF, JPG, MS Word, MS Excel, etc. Be advised that the application form allows a maximum file size of 20 MB. Large attachments may affect your ability to submit your application.

APPLICATION DE-BRIEFINGS:

Following the announcement of awards, NYSDOT will be available to discuss applications that were not selected for funding with applicants. Information provided may include reason(s) the application was not selected and identified areas of improvement for future applications.

To schedule an application debriefing, use the contact information found on Page 3 of these guidelines.

APPENDIX A

BENEFIT / COST RATIO ANALYSIS

Instructions

NYSDOT believes that benefit-cost analysis (BCA), including the monetization and discounting of costs and benefits in present-day dollars, provides a useful measure of a project's cost-effectiveness and provides a mechanism to compare dissimilar project types. Therefore, all applicants are required to identify, quantify, and compare expected public benefits and public costs.

NYSDOT understands that the level of expense associated with surveys, travel demand forecasts, market forecasts, statistical analyses, and other studies necessary to support the BCA can be significant. Therefore, applicants may estimate benefits subjectively. However, applicants will be expected to quantify these subjective estimates of benefits and costs, and to provide whatever evidence they have available to support their subjective estimates.

Methodology for preparing BC Analysis

Applicants should refer to the US Department of Transportation's [Benefit-Cost Analysis Guidance for Discretionary Grant Programs](#), dated January 2023, for guidance on preparation of their BCA.

Identification and Monetization of Project Benefits

In addition to the guidance provided in the US Department of Transportation's [Benefit-Cost Analysis Guidance for Discretionary Grant Programs](#), dated January 2023, NYSDOT has identified a group of benefits which are commonly associated with the projects submitted to NYSDOT for funding. The table contained in this appendix provides standardized conversion factors and monetization factors for these benefits. These factors should be used by applicants in preparing their analysis unless the applicant can adequately justify use of a different value.

Common public benefits often include (but are not limited to):

- ENVIRONMENTAL
 - Carbon Emissions reduction;
 - NOx Emissions reduction;
 - Particulate Matter (PM) Emissions reduction;
 - Conservation of fossil fuels (reduction in gallons used).
- SAFETY
 - Heavy truck crash reduction;
 - Grade Crossing crash reduction;
 - Rail accident reductions (derailments).
- REDUCED PUBLIC EXPENDITURES
 - Heavy Truck VMT reduction;
 - Congestion Mitigation.

Quantifying each of these potential benefits requires development of certain data by the applicant. This includes:

Traffic Volumes:

- **Base year traffic (Tons):** Use the most recent year for which actual data is available for the total tonnage shipped over the project facility. Using a growth rate of 1.3% (based on the USDOT Freight Analysis Framework-2 growth rate for rail traffic in New York), inflate the baseline traffic volumes to 2022.
- **Future no-build traffic (Tons):** Project future traffic volumes for each year through the full-service life of the project assuming the project is never built. As with base-year traffic, a 1.3% growth rate should be generally assumed. However, if the failure to implement the project would restrict traffic (such as by closure of a bridge for structural conditions), future traffic could drop as well.
- **Future traffic w/project (Tons):** Project future traffic volumes for each year through the full-service life of the project assuming the project is built. As with base-year traffic, a 1.3% growth rate should be generally assumed. However, if the project is tied directly to the development of new traffic, the projected traffic from the new facility should be considered incremental to the background growth.

Vehicle Conversions:

- **Net Tons per rail car**
 - **Net Tons per truck**
- Both values can vary based on the commodity carried. The value selected should be an average representative of the mix of commodities contained in the Base Year and Future traffic volumes.

Trip Distance:

- **Highway routing** – Provide the distance the traffic would move via a highway routing, from its origin to its destination. Google maps or other similar source should be the basis for highway mileage.
- **Rail routing** – Provide the distance the traffic would move via a rail routing, from its origin to its destination. Applicants can calculate the mileage directly, use Waybill miles, or may generally assume the rail routing to be 40% longer than the highway mileage.

With this data, most of the public benefits identified above can be computed using the conversion factors and monetization factors included in this Appendix or in the USDOT's guidance. Other benefits may require other methods, such as utilizing the FRA's Quiet Zone Calculator (see <http://safetydata.fra.dot.gov/quiet/>) to estimate grade crossing crash reductions.

Sample BC Analysis

An example of a complete benefit cost analysis can be found on NYSDOT's web site at: https://www.dot.ny.gov/divisions/operating/opdm/passenger-rail/passenger-rail-repository/PVapA_BC.pdf.

BCA Calculation Tool

NYSDOT has developed an Excel spreadsheet to assist applicants with the preparation of their BCA analysis. The spreadsheet and instructions for its use are available on NYSDOT's web site at www.dot.ny.gov/railgrants. Applicants are not required to utilize this spreadsheet for the preparation of their BCA analysis, but a similar analysis is required. In the case of non-railroad projects, you will need to develop your own BCA using the USDOT guidance and/or generally accepted accounting practices. In any and all cases, your calculations should be included, in their entirety, in an open spreadsheet native format, as well as explanations of your methodology, if it differs from NYSDOT's methodology. If local or regional economic benefits are claimed, they must be accompanied by a letter from a local or regional economic agency.

In some cases, such as the installation of Continuous Welded Rail (CWR) or track improvements that remove Slow Orders, track speeds will be raised, and fuel economy will be improved. These fuel/time/labor savings can all be monetized and claimed.

In the case of diesel engine improvements or operational improvements that improve mileage per gallon of fuel, make sure the data for the older engine, or Before scenario, is placed in the upper portion of the spreadsheet and that the data for the new replacement engine, or After Improvement scenario, is placed in the lower half of the spreadsheet.

Benefit / Cost Analysis

Sample Conversion Factors

Factor	Value	Units	Source
State of Good Repair:			
Avoided Highway and Bridge Maintenance	\$0.266306	Vehicle Mile Traveled	2000 update to FHWA's 1997 <i>Federal Highway Cost Allocation Study</i> , \$0.166 / VMT inflated to 2022 at 3% annually
Fuel Efficiency:			
Truck	6.2	Miles/gal	Bureau of Transportation Statistics
Rail	0.002066	Gal/ton-mi	AAR
Cost of Fuel (Diesel)	\$5.84	\$ / Gal	NYSERDA Transportation Fuels Report, December 5, 2022
Environment:			
Carbon Emissions (truck)	0.0111	Tons / gal	US EPA
NOx Emissions (truck)	0.000022382	Tons / gal	Texas Transportation Institute 2007
PM Emissions (truck)	0.000003	Tons / gal	Texas Transportation Institute 2007
Carbon Emissions (rail)	Varies by Tier & Loco Type	Tons / gal	EPA Emission Factors for Locomotives , EPA-420-F-09-025
NOx Emissions (rail)			
PM Emissions (rail)			
Carbon Emissions	Varies	\$ / Ton	USDOT BCA Guidance Document , Table A-6
NOx Emissions	\$18,900	\$ / Ton	USDOT BCA Guidance Document , Table A-6
SOx Emissions	\$51,300	\$ / Ton	USDOT BCA Guidance Document , Table A-6
PM Emissions	\$907,600	\$ / Ton	USDOT BCA Guidance Document , Table A-6
Livability:			
Travel Time Savings	Varies	\$ / hour	Use USDOT BCA Guidance Document , Table A-3
Highway Congestion Cost	\$2.40	\$ / Truck Mile	Bronx, Kings, New York, Queens, Richmond Counties
	\$1.62	\$ / Truck Mile	Nassau, Suffolk Counties
	\$1.52	\$ / Truck Mile	Westchester County
	\$1.13	\$ / Truck Mile	Rockland County
	\$1.05	\$ / Truck Mile	Erie County
	\$0.90	\$ / Truck Mile	Albany County
	\$0.56	\$ / Truck Mile	Monroe County
	\$0.51	\$ / Truck Mile	Putnam County
	\$0.36	\$ / Truck Mile	Saratoga County
	\$0.24	\$ / Truck Mile	Onondaga County
	\$0.14	\$ / Truck Mile	Orange County
Safety:			
Truck Fatal Accidents Rate	0.177	Fatalities per 100 m VMT	https://www.fmcsa.dot.gov/safety/data-and-statistics/large-truck-and-bus-crash-facts-2020
Truck Injury Accidents Rate	5.51	Injuries per 100 m VMT	https://www.fmcsa.dot.gov/safety/data-and-statistics/large-truck-and-bus-crash-facts-2020
Fatal Accident Cost	\$11,800,000	Per fatality	USDOT BCA Guidance Document , Table A-1
Injury Accident Cost	Varies	Per Injury	USDOT BCA Guidance Document , Table A-1
Minor Derailment Cost	\$25,000	Per incident	

APPENDIX B

PROJECT SERVICE LIFE WORKSHEET **Instructions**

PROJECT SERVICE LIFE CALCULATION:

Compute the weighted average service life of the proposed project by allocating the project estimate to the work types identified. Project engineering and environmental costs should be pro-rated across the work types.

The useful service life of work items not included on the form should be based on the Service Lives for Railroad Property established by the NYS Department of Taxation and Finance, Property Tax and Assessment Administration, to the extent practicable. See: http://www.tax.ny.gov/research/property/legal/procedures/railroad06.htm#service_lives

Note the minimum service life associated with this program is 10 years.

APPENDIX C

SMART GROWTH GUIDANCE

The Smart Growth Public Infrastructure Policy Act is intended to maximize the social, economic and environmental benefits from public infrastructure development through promoting climate risk resiliency and minimizing unnecessary costs of sprawl development including environmental degradation, disinvestment in urban and suburban communities and loss of open space induced by the funding of development of new or expanded transportation, sewer and wastewater treatment, water, education, housing and other publicly supported infrastructure inconsistent with smart growth infrastructure criteria.^a

In order to judge how well a proposed project complies with the intent of the legislation, the project is compared against the eleven Smart Growth Criteria established in the law.

The following is provided to assist in answering the Smart Growth Worksheet:

1. Does the project use, maintain or improve existing infrastructure?

Infrastructure includes roads, sewers, water, natural gas, sidewalks, and electricity, as well as when appropriate, older buildings, former industrial sites, warehouses, utility installations, etc. The objective is to re-utilize existing infrastructure rather than build new.

Assuming that you are using or improving existing infrastructure, answer “YES” unless the application is for completely new infrastructure. If you are creating new infrastructure, answer “NO” and provide justification that explains the need to build new infrastructure instead of using or improving existing infrastructure.

2. Is the project located in a municipal center?

A Municipal Center is defined in the statute as: an area of concentrated and mixed land use that serves as a center for various activities, including but not limited to, central business districts, main streets, downtowns, Brownfield Opportunity Areas, downtown areas within Local Waterfront Revitalization Program Areas, transit-oriented developments, Environmental Justice Areas and Hardship Areas.

3. Is the proposed project located in a developed area or an area designated for concentrated infill development in a municipally approved comprehensive land use plan, local waterfront revitalization plan and/or brownfield opportunity area plan?

The definition for “developed area” is the same as municipal center. Areas designated for concentrated “infill development” would include new development on vacant, bypassed, and underutilized land within built up areas of existing communities, where infrastructure is already in place.

^a The Community Risk and Resiliency Act of 2014 amended SGPIPA by adding a new resiliency criterion.

4. **Will the proposed project protect, preserve and enhance the State’s resources, including agricultural land, forests, surface and groundwater, air quality, recreation and open space, scenic areas, and significant historic and archeological resources?**
Provide any additional relevant information.
5. **Will the proposed project foster mixed land uses and compact development, downtown revitalization, brownfield redevelopment, the enhancement of beauty in public spaces, the diversity and affordability of housing in proximity to places of employment, recreation and commercial development and the integration of all income and age groups?**
Provide any additional relevant information.
6. **Will the proposed project provide mobility through transportation choices including improved public transportation and reduced automobile dependency?**
Provide any additional relevant information.
7. **Will the proposed project involve coordination between state and local government and inter-municipal and regional planning?**
Identify any interaction between the applicant and any municipal and county governments, planning boards, regional planning associations or similar organizations. Document any outreach by the applicant to these organizations regarding the project and submit any relevant correspondence.
8. **Will the proposed project participate in community-based planning and collaboration?**
The Smart Growth legislation requires the NYSDOT, as a state infrastructure agency, to “solicit input from and consult with various representatives of affected communities and organizations within those communities...” and “...give consideration to the local and environmental interests affected by the activities of the agency or projects planned, approved or financed through such agency” (ECL § 6-0109). To comply with this requirement, the NYSDOT intends to solicit input from potential affected parties (local representatives) based on information provided by the applicant.

To assist with that effort, identify any affected community groups or organizations with an interest in the proposed project. Include the name of the organization, contact person, phone number and email address. Document any outreach by the applicant to these organizations regarding the project and submit any relevant correspondence.
9. **Will the proposed project ensure predictability in building and land use codes?**
Provide any additional relevant information.
10. **Will the proposed project promote sustainability by strengthening existing and creating new communities which reduce greenhouse gas emissions and do not compromise the needs of future generations, by among other means encouraging broad based public involvement in developing and implementing a community plan and ensuring the governance structure is adequate to sustain its implementation?**
Provide any additional relevant information.

11. Will the proposed project promote resiliency by mitigating future physical climate risk due to sea-level rise, storm surges, and flooding, based on available data predicting the likelihood of future extreme weather events, including hazard risk analysis data, if applicable?

For this criterion, the impacts of extreme weather and the risk of flooding need to be considered. As a first step, applicants should determine if a project is adjacent to a mapped stream, lake, or other water body, or located near or in a Coastal Flood Hazard Area, i.e. in an area exposed to current or future tides. Applicants are encouraged to use the Flood Risk Decision Support Tools outlined in Appendix C of the NYS Flood Risk Management Guidance

(https://www.dec.ny.gov/docs/administration_pdf/crrafloodriskmgmtgdnc.pdf)

Applicants are encouraged to consider:

- o How the proposed project addresses the “General Principles for Smart Growth Assessments” outlined in the “NYSDEC Guidance for Consideration of Flood Risk in Smart Growth Public Infrastructure Assessments” (page 4) https://www.dec.ny.gov/docs/administration_pdf/crrasmartgrowth.pdf;
- o How the project addresses the criteria described in the NYS Flood Risk Management Guidance (link above).

The New York State Department of Environmental Conservation (NYSDEC) has also developed a quick guide called “Estimating Guideline Elevations” https://www.dec.ny.gov/docs/administration_pdf/crraestelevguidelines.pdf to help applicants consider resiliency to flooding. Please note that NYSDEC also references other guidance such as Natural Resiliency Measures to increase resiliency. Note also that sea level rise projections are expected to be updated every 5 years. For more information, please visit the NYSDEC Community Risk and Resiliency Act webpage at <https://www.dec.ny.gov/energy/102559.html>

As projects are designed, as part of comprehensive risk assessments, applicants should document how resiliency to current and future flooding has been considered and whether cost-effective solutions have been included in the project to address this risk. If resiliency could not be addressed in whole or in part, documentation as to why should also be included.

APPENDIX D

SAMPLE MAINTENANCE OBLIGATION LETTER

[Property Owner Letterhead]

Date

Director
New York State Department of Transportation
Freight & Passenger Rail Bureau
50 Wolf Road, POD 5-4
Albany, NY 12232

RE: [Project Title]
[Applicant]

I understand that our [lease / contract operator], the [Applicant] is applying for funding from the New York State Department of Transportation through the Passenger & Freight Rail Assistance Program. I further understand that these funds require that the state-funded improvements be operated and maintained at no future cost to the State of New York for a period of 10 years following completion of the project.

Our [lease / operating agreement] with [Applicant] expires in _____ years, on [date], which is prior to the expiration of the maintenance and operation obligation associated with the requested state funding.

If the [Applicant]'s request for funding is approved, I understand that as owner of [Facility to be improved], [Facility Owner's Name] may be required to co-sign the grant agreement between NYSDOT and [Applicant], committing [Facility Owner's Name] to assume or assign the obligation to operate and maintain the state-funded improvements for the balance of the term.

Sincerely,

[Authorized Employee], [Title]

APPENDIX E

SAMPLE FORM OF PFRAP AGREEMENT WITH ACCOMPANYING APPENDICES

NEW YORK STATE DEPARTMENT OF TRANSPORTATION

GRANT AGREEMENT

«GRANTEE»

«PROJECT_TITLE»

COMPTROLLER CONTRACT # _____

PROJECT IDENTIFICATION # «PIN»

This Agreement, by and between the People of the State of New York (hereinafter referred to as "STATE") acting by and through the Commissioner of the Department of Transportation (hereinafter referred to as "COMMISSIONER"), with offices at 50 Wolf Road, Albany, New York 12232, and the «Grantee», with offices at «Grantee_Address», «Grantee_City», «Grantee_State» «Grantee_ZIP», (hereinafter referred to as the "GRANTEE") provides for the design, construction, reconstruction, improvement or rehabilitation of rail facilities as is more fully described in Appendix I of this Agreement.

WITNESSETH

WHEREAS, the STATE and the GRANTEE wish to provide for the preservation and improvement of the Project Facilities so as to allow for the safe and efficient movement of rail and vehicular traffic; and,

WHEREAS, Section 14 of the Transportation Law authorizes the COMMISSIONER to enter into contracts for the purpose of maintaining and improving rail transportation service; and,

WHEREAS, the total cost for this project is «Total_Project_Cost_Text» dollars («Total_Project_Cost»); and,

WHEREAS, Rail Preservation Purpose funds have been appropriated to the Department of Transportation to provide assistance to Railroads for the payment of the STATE's share of a rail project to be undertaken in accordance with the provisions of the aforesaid Section 14 of the Transportation Law; and,

WHEREAS, the «Grantee» agrees to provide at least «Grantee_Share_Text» dollars («Grantee_Share») in funding or a pro rata share of «Grantee_Percentage» of the total funding for this project; and,

PIN «PIN»

«Grantee»

«Project_Title»

WHEREAS, it has been determined to be in the best interest of the public to make «Grant_Amount_Text» dollars («Grant_Amount») available to the «Grantee» for those capital improvements used in connection herewith.

NOW THEREFORE, the parties hereto in consideration of the mutual promises, conditions, terms and obligations herein set forth, agree and covenant as follows:

ARTICLE ONE: DEFINITIONS

What is intended by the words and expressions defined below, shall be construed to have these meanings except where it is clear from the context that another meaning is intended.

"Agreement" means this document (with appendices).

"STATE" means the People of the State of New York acting by and through the Commissioner of the Department of Transportation.

"COMMISSIONER" means the Commissioner of the New York State Department of Transportation or his or her designated representative.

"GRANTEE" means the «Grantee» receiving financial assistance under this Agreement.

"NYSDOT" means the New York State Department of Transportation.

"Project or Approved Project" means the design, construction, reconstruction, establishment, improvement, rehabilitation or modernization of rail facilities and other capital improvements conducted pursuant to this Agreement.

"Project Costs" means those costs as defined and contemplated in Section 2.6 for accomplishing the work set forth in Appendix I of this Agreement and computed in accordance with 23 CFR, Part 140, Subpart I, and amendments thereto.

"Project Facilities" means those facilities being constructed on underlying property excluding the underlying property, together with all materials, equipment, facilities or supplies acquired, constructed, reconstructed, established, improved or rehabilitated by or on behalf of the GRANTEE pursuant to the provisions of this Agreement to accomplish the work program set forth in the Work Schedule.

"Work Schedule" means a description of the project as described in Appendix I.

ARTICLE TWO: CAPITAL IMPROVEMENTS

Section 2.1 Description of Work

GRANTEE agrees to complete or cause to be completed the work described in the Work Schedule constituting Appendix I of this Agreement (hereinafter referred to as the "Work Schedule"), which is attached hereto and made a part hereof, in accordance with said Work Schedule as may be modified or amended, and within the term specified in Section 4.1 or any extension thereof.

The term for accomplishing of work set forth in said Work Schedule may be extended or modified by mutual agreement between the parties in writing. No work to be financed by the STATE may begin without written approval from the COMMISSIONER.

Section 2.2 Manner of Performing Work

GRANTEE agrees to undertake or cause to be undertaken and to proceed expeditiously with the work to be accomplished as described in the Work Schedule, and to complete or cause to be completed said work by the date specified in Section 4.1. GRANTEE shall update said schedule upon written approval of the COMMISSIONER as necessary to assure that it accurately reflects the GRANTEE's timetable for completion.

Section 2.3 Approval of Subcontracts

Prior to advertising for any contract, subcontract, or service, GRANTEE shall obtain the prior written approval of the COMMISSIONER, which shall not be unreasonably withheld or delayed. GRANTEE shall not execute any contract, subcontract or amendment thereto, or obligate itself in any other manner with any third party relating to or with respect to the Project to be undertaken pursuant to this Agreement without the prior written approval of the COMMISSIONER, which shall not be unreasonably withheld or delayed. This Section 2.3 shall apply only to contracts, subcontracts, amendments and obligations pursuant to which GRANTEE incurs costs or expenses which are to be paid for in whole or in part by the STATE pursuant to this Agreement.

All agreements between the GRANTEE and subcontractors shall be by written contract, signed by individuals authorized to bind the parties. All such subcontracts shall contain provisions for specifying (1) that the work performed by the subcontractor must be in accordance with the terms of this Agreement, (2) that nothing contained in the subcontract shall impair the rights of the STATE under this Agreement, and (3) that nothing contained in the subcontract, nor under this Agreement shall be deemed to create any contractual relationship between the subcontractor and the STATE.

Section 2.4 Environmental Protection and Permits

GRANTEE agrees to obtain or cause to be obtained all approvals, permits and licenses necessary

to progress the work described in Appendix I - Work Schedule, and also agrees to comply or cause to be complied with all applicable Federal, State and Local environmental laws and regulations or other laws, including New York Railroad Law, which in any way impacts work to be accomplished by the project.

Section 2.5 Inspection

During the term of this Agreement, the COMMISSIONER shall have the right to enter upon the Project Facilities for the purposes of inspecting and examining the condition of the Project Facilities and any activities conducted pursuant to this Agreement. Such right shall be exercised only at reasonable times and upon prior notice to GRANTEE.

Such inspection shall be conducted as outlined in the "Manual of Construction Supervision and Inspection Procedures for Work by Railroad Force Account" and/or the "Manual of Construction Supervision and Inspection Procedures for Railroad Let Contracts" as prepared by the Rail Division/Operations Bureau of the New York State Department of Transportation and dated January 1984, as amended. It is intended by the parties hereto that by reference to said manuals, it is agreed that the provisions thereof are deemed to be included herein and are accepted as binding upon the parties for purposes establishing construction inspection standards to the same extent and with the same force and effect as if said manuals had been set forth in and made a part of this Agreement.

Section 2.6 Reimbursement

STATE agrees to reimburse GRANTEE the pro rata share of «State_Share» of the eligible Project Costs up to the amount identified in Appendix I-Work Schedule which GRANTEE incurs for the work performed or facilities provided as described in the attached Appendix I-Work Schedule. GRANTEE agrees to provide a pro rata share of «Grantee_Percentage» of the eligible project costs as identified in Appendix I-Work Schedule. Project Costs in excess of STATE funds available for the work shall be the responsibility of GRANTEE. In no event shall the STATE be obligated to fund or reimburse any costs exceeding «Grant_Amount». The STATE shall not be obligated to pay nor shall GRANTEE claim reimbursement for the use of facilities or equipment which have been acquired by GRANTEE in whole or in part with funds provided by STATE under this or any other agreement. GRANTEE shall provide its share of the cost of the project, if any.

Prior to start of construction, GRANTEE shall certify the source and availability of funds for Project Costs which are in excess of STATE funds being made available under this Agreement.

The GRANTEE shall submit to the STATE fair and reasonable charges, less the salvage value of materials recovered, as evidence by detailed invoices, for the cost of the work performed or facilities provided as described above, in accordance with the procedures acceptable to the COMMISSIONER and the State Comptroller. All costs charged to the project shall be properly

supported by executed payrolls or abstracts thereof, time, material and accounts payable distribution records, invoices, contracts, vouchers and/or canceled checks evidencing in proper detail the nature and propriety of the charges and the payment of all liabilities by the GRANTEE. These documents shall be retained and maintained by the GRANTEE, as provided in Section 4.10 herein, so that they will be available for audit by authorized representatives of the COMMISSIONER and State Comptroller.

Monthly accounting, in accordance with approved certification of such costs incurred by GRANTEE including the last day of the previous month less the salvage value of materials recovered during that month, shall be submitted, provided the amount is \$1,000.00 or more and may be submitted for smaller amounts or lesser time-frames upon special request by the party originating the same and approval of COMMISSIONER.

In addition to other requirements of this agreement, the original expenditure must have been paid within the past 15 months in order to comply with Federal Tax Law (26 CFR 1.150-2 (d)(2)(i)) which governs fund disbursements from the issuance of tax-exempt bonds. Hence, expenditures paid greater than 15 months prior to the reimbursement request are ineligible for reimbursement.

The STATE shall reimburse the GRANTEE in the amount of the approved Project Costs so submitted as to the work performed. In no event shall the cost to STATE of said work exceed the amount specified in the Work Schedule, except as such cost may hereinafter be increased pursuant to a written amendment to this Agreement by the parties hereto. All costs so submitted by GRANTEE shall be subject to approval by COMMISSIONER, and to audit by the COMMISSIONER and the State Comptroller.

Upon the completion of all said work by GRANTEE pursuant to this Agreement, a final statement of costs shall be submitted to the STATE within one hundred eighty (180) days. Upon receipt of the final statement of costs by the COMMISSIONER, the COMMISSIONER will conduct an audit of the GRANTEE project account records within one hundred eighty (180) days to determine the resources applied or used by GRANTEE in fulfilling the terms of this Agreement. Upon the completion of said audit and concurrence by GRANTEE, the final reimbursement payment will be made to GRANTEE.

Section 2.7 Electronic Contract Payments

GRANTEE shall provide complete and accurate supporting documentation of eligible expenditures as required by this contract, the COMMISSIONER and the State Comptroller. Following COMMISSIONER approval of such supporting documentation, payment for invoices submitted by the GRANTEE shall only be rendered electronically unless payment by paper check is expressly authorized by the COMMISSIONER, in the COMMISSIONER's sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices. The GRANTEE shall comply with the State

Comptroller's procedures for all Federal and applicable State Aid to authorize electronic payments. Authorization forms are available at the State Comptroller's website at www.osc.state.ny.us/epay/index.htm, by email at epayments@osc.state.ny.us, or by telephone at 518-474-4044. The GRANTEE herein acknowledges that it will not receive payment on any invoices submitted under this Contract agreement if it does not comply with the applicable State Comptroller's electronic payment procedures, except where the COMMISSIONER has expressly authorized payment by paper check as set forth above.

Section 2.8 State Recovery of Ineligible Reimbursements.

In the event that any payments are made by the STATE to the GRANTEE for costs incurred by GRANTEE, which are subsequently determined to be ineligible for reimbursement under this Agreement, STATE may retain an amount equal to any such excess payments from any monies then or which may become due and owing to GRANTEE under the Agreement, or GRANTEE shall repay such amount to STATE within forty-five (45) days from the date GRANTEE receives notice of such determination of ineligibility or the date on which a final decision is made in any appeal or review of such determination authorized by applicable law and made by GRANTEE, whichever is later.

Section 2.9 Failure to Diligently Progress Project or Loss of State Participation.

In the event the COMMISSIONER determines that the GRANTEE has failed to diligently progress the project, or in the event the GRANTEE withdraws its approval of the project, or the GRANTEE suspends or delays work on the Project such that it can not be reasonably completed, or takes other action that results in the loss of state participation in the costs incurred pursuant to this agreement, the GRANTEE shall refund to the STATE all reimbursements received from or through the STATE. The STATE may offset any other STATE aid due to the GRANTEE by such amount and apply such offset to such repayment obligation of the GRANTEE.

Section 2.10 Civil Rights Requirements

The provisions of New York State Executive Law Article 15-A, Article 17-B and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations ("NYCRR") are applicable to all State contracts. The GRANTEE shall comply with these laws, rules and regulations and the M/WBE and SDVOB Program requirements.

a) Equal Employment Opportunity (EEO) Policy Statement. Pursuant to 5 NYCRR §143.2, a GRANTEE shall adopt an EEO policy if one is not previously adopted, as provided in Appendix B, and submit to NYSDOT a signed copy of Appendix B.

b) Minority and Women-owned Business Enterprise (M/WBE) and Service-Disabled Veteran Owned Business (SDVOB) Goals. The GRANTEE must comply with all M/WBE requirements and goals stated within the provisions of Appendix B, titled, “Minority and Women-owned Business Enterprises – Service-Disabled Veteran Owned Business – Equal Employment Opportunity Policy Statement”. If any part of the GRANTEE’s grant is effectuated with either the GRANTEE’s employed workforce or through pre-existing competitively procured contracts, then the GRANTEE shall not apply goals to that portion of the work. In either case, the GRANTEE is encouraged to maximize M/WBE and SDVOB participation to the maximum extent practicable.

c) M/WBE and SDVOB Guidance. Refer to the New York State Department of Transportation website and Appendix B for guidance related to M/WBE and SDVOB goals at: <https://www.dot.ny.gov/main/business-center/civil-rights/>. Assigned M/WBE and SDVOB goals must be included in the GRANTEE’s proposed contract documents when submitted for NYSDOT approval prior to project advertisement. Any requests for a reduction or waiver of the goals must be submitted at that time so that the correct goals are included in the project advertisement. For purposes of providing meaningful participation by M/WBE and SDVOB firms on the Agreement and achieving the M/WBE and SDVOB Contract Goals established in Section 2.10.a hereof, the GRANTEE should reference the directory of M/WBE firms at the following internet address: <https://ny.newnycontracts.com> and the directory of SDVOB firms at the following internet address: <https://online.ogs.ny.gov/SDVOB/search>.

d) Good Faith Efforts. If a GRANTEE fails to meet the M/WBE or SDVOB requirements set forth in Appendix B, they must demonstrate Good Faith Efforts pursuant to 5 NYCRR §142.8.

e) M/WBE and SDVOB Compliance Reports. The GRANTEE shall require their consultants and contractors to submit electronic, monthly M/WBE and SDVOB compliance reports via NYSDOT’s Standard Civil Rights Reporting Software (EBO), on or before the 15th day of the immediately preceding month. The GRANTEE must apply for access to EBO at the following website: <https://www.dot.ny.gov/dotapp/ebo>.

f) Failure to Comply. If the GRANTEE fails to monitor and administer contracts in accordance with State requirements, the GRANTEE will not be reimbursed for associated activities within the affected contracts. The GRANTEE must ensure that any contract it awards under this Agreement has a Minority and Women-owned Business Enterprise (M/WBE) and a Service-Disabled Veteran Owned Business (SDVOB) Utilization Plan and complies with such plans. If, without prior written approval by NYSDOT, the GRANTEE’s contractors and subcontractors fail to complete work for the project as proposed in the M/WBE and SDVOB Schedule of Utilization, NYSDOT at its discretion may (1) cancel, terminate or suspend this agreement or such portion of this agreement, or (2) assess liquidated damages in an amount of up to 20% of the portion of the GRANTEE’s contracts and subcontracts funded in whole or in part by this agreement, to which contract goals are established by NYSDOT.

k) Equal Employment Opportunity (EEO) Requirements. EEO goals (as provided in “CAPITAL PROJECT GUIDELINES”), EEO Policy Statement (as provided in “Appendix B – MWBE-SDVOB and EEO Policy Statements”) and specifications (as provided in NYSDOT’s Standard Specifications §102-11 Equal Employment Opportunity Requirements) must be included in the contract documents and project advertisement.

<https://www.dot.ny.gov/main/business-center/engineering/specifications/updated-standard-specifications-us>

l) EEO Monitoring and Reporting. EEO participation shall be monitored by the GRANTEE as the project progresses. EEO participation shall be reported by the contractor through NYSDOT’s civil rights reporting software, EBO.

Section 2.11 Quarterly Project Reports

The GRANTEE shall submit, to the designated STATE representative, Quarterly Project Reports (Quarterly Reports), based on the quarters of the Federal fiscal year (October 1 through September 30), due ten (10) days after the end of each quarter (January 10, April 10, July 10 and October 10 of each year). The first Quarterly Report will cover the time period from when the fully executed agreement is received by the GRANTEE to the end of the specific quarter as described above.

The Quarterly Reports may be submitted hardcopy or (preferably) electronically. The Quarterly Reports should be in the format of Appendix III. Electronic copies of the Quarterly Reports shall be obtained by contacting the STATE designee noted in Section 4.13 “Notices” of this Agreement.

The GRANTEE agrees to include in the Quarterly Reports, submitted in accordance with this Agreement, brief information on the following areas:

- A comparison of actual accomplishments with planned outcomes;
- Reason(s), if any, for delays;
- Planned outcomes for the upcoming quarter; and
- Any information relative or pertinent to project progress, cost and scheduled completion

The GRANTEE agrees that it will notify STATE of problems, delays or adverse conditions which materially impair the ability to meet the scheduled completion date as specified in Appendix I - Work Schedule.

The Quarterly Reports format and content requirements may be subject to change during the progress of the project. Quarterly Project Reports are considered project status reports and will address the progress made in achieving the work as depicted in Appendix I - Work Schedule.

Section 2.12 Federally Funded Grants

The funds provided to the GRANTEE through this Agreement are New York State funds. The GRANTEE may utilize federal funding for any GRANTEE share identified herein, subject to prior STATE approval and subject to the following conditions:

- i. The terms and conditions of this agreement that conflict with federal rules, federal regulations, or federal program specific requirements shall not apply.
- ii. The GRANTEE shall comply with all applicable federal rules, regulations and program specific requirements.
- iii. The GRANTEE shall submit to the COMMISSIONER a copy of the grant or other instrument by which the federal funds are provided to the GRANTEE.

ARTICLE THREE: OPERATION, MAINTENANCE AND ABANDONMENT

Section 3.1 Title to Materials

The materials installed at STATE expense pursuant to this Agreement, excluding the underlying land, shall be the property of the STATE and title thereto shall vest in the STATE at the time of acquisition and shall remain vested in the STATE for the operation and maintenance term of this Agreement specified in Section 4.1 or any extension thereof. Upon completion of the operation and maintenance term of this Agreement, title shall be vested in the GRANTEE without need of any execution and delivery of deeds, bill of sale or other title document.

Section 3.2 Use and Disposition of Project Facilities

Upon completion and acceptance of the Project Facilities by GRANTEE, GRANTEE shall certify in writing to the COMMISSIONER that the Project Facilities have been completed and accepted in accordance with the WORK SCHEDULE.

GRANTEE shall provide rail service on or in connection with the Project Facilities in compliance with all applicable Federal, State and Local laws, ordinances and regulations in any way relating to the use, rail service or maintenance thereof.

GRANTEE agrees that, during the term of this Agreement or in any event if funding of the STATE's share is from the proceeds of bonds or other obligations issued by the STATE or any of its public benefit corporations, such Project Facilities shall not be sold, rendered unusable, relinquished, or disposed of by GRANTEE without the express written consent of the COMMISSIONER having first been obtained, which shall not be unreasonably withheld or delayed.

Section 3.3 Maintenance

GRANTEE agrees to maintain, or arrange to have maintained, at no expense to STATE, the Project Facilities as well as ancillary facilities, in accordance with usage, for the operation and maintenance term specified in Section 4.1 hereof.

Section 3.4 Abandonment

GRANTEE shall have the right to abandon part or all of the Project Facilities, or to discontinue or curtail service thereover, provided that:

- a Said abandonment, discontinuance or curtailment of service has been authorized by the federal Surface Transportation Board or any body having jurisdiction thereof;
- b. At the time of abandonment, discontinuance or curtailment of service, the Project Facilities

shall comply with all provisions of said Agreement; and

- c. The COMMISSIONER has the right to oppose any abandonment or discontinuance action before the Surface Transportation Board.

Should GRANTEE exercise this right to abandon part or all of the Project Facilities or permanently discontinue use thereof within the term of this Agreement, GRANTEE shall reimburse STATE for Project Costs previously reimbursed by STATE under this Agreement based on straight line depreciation of Project Costs reimbursed by STATE calculated over the maintenance term of this agreement as set forth in Section 4.1.

ARTICLE FOUR: GENERAL PROVISIONS

Section 4.1 Term of Agreement

The term of this Agreement shall begin on «Tem_Begin_Date»; with work to be completed by «Term_End_Date», unless otherwise amended; and the operation and maintenance term shall extend until «Maintenance_Years» years from the date of completion of work as accepted by STATE.

Section 4.2 Required Approvals

In accordance with Section 112 of the State Finance Law, this Agreement shall not be valid, effective or binding upon the STATE until it has been approved by and filed with the New York Attorney General Contract Approval Unit (AG) and the Office of the State Comptroller (OSC).

Section 4.3 Liability and Indemnification

GRANTEE hereby agrees to indemnify and hold harmless the STATE, the Department of Transportation and their respective agents and employees from any and all liability for injury to or death of any person or persons and for loss of, damage to, or destruction of any property or equipment which arises from activities conducted by or on behalf of the GRANTEE pursuant to this Agreement, including all related costs and counsel fees, except when attributable to the fault or negligence of the STATE, the Department of Transportation, its respective agents and employees other than GRANTEE.

GRANTEE agrees to require its contractor(s) to procure and maintain until final acceptance of the Project by the STATE, insurance of the kinds and in the amounts hereinafter provided in insurance companies authorized to do business in the State of New York, covering all activities under this Agreement whether performed by the GRANTEE, its contractor(s) or subcontractor(s). GRANTEE shall furnish to the STATE a certificate(s), in a form satisfactory to the STATE, showing compliance with this Article, which certificate(s), shall provide that the policies shall not be changed or canceled until thirty (30) days written notice has been given to the STATE. The kinds and amounts of insurance required are as follows:

In addition to any other forms of insurance or bonds required under the terms of the contract and specifications, the GRANTEE's Contractor will be required to carry insurance of the following kinds and amounts:

a. Public Liability Insurance

With respect to the operations performed, regular Contractor's Public Liability Insurance is provided for a limit of not less than \$2,000,000. Single Limit, Bodily Injury and/or Property Damage combined, for damages arising out of bodily injuries to or death of all

persons in any one occurrence and for damage to or destruction of property, including the loss of use thereof, in any one occurrence.

b. Protective Public Liability Insurance

With respect to the operations performed, subcontractors provide regular Contractor's Protective Public Liability Insurance for a limit of not less than \$2,000,000. Single Limit, Bodily Injury and/or Property Damage combined, for damages arising out of bodily injuries to or death of all persons in any one occurrence and for damage to or destruction of property, including the loss of use thereof, in any one occurrence.

c. Motor Vehicle Liability Insurance

With respect to any motor vehicles which may be used in connection with the work to be performed, the Contractor shall maintain a policy(s) as required by the Motor Vehicle Laws of the State of New York to bear license plates.

d. Railroad Protective Public Liability Insurance

With respect to the operations the Contractor or any of the Contractor's subcontractors perform, Contractor shall provide Railroad Protective Public Liability Insurance (AAR-AASHTO Form) in the name of all railroad companies operating at the location of the Project Facilities providing for a limit of not less than \$2,000,000. Single Limit, Bodily Injury and/or Property Damage combined, for damages arising out of bodily injuries to or death of all persons in any one occurrence and for damage to or destruction of property, including the loss of use thereof, in any one occurrence. Such insurance shall be furnished with an aggregate of not less than \$6,000,000 for damages as a result of more than one occurrence.

e. Force Account Insurance

The GRANTEE shall carry Force Account insurance covering bodily injury, legal liability, liability assumed under this Agreement and property damages resulting from any acts, errors or omissions for the work performed by GRANTEE's employees in connection with this Agreement. This policy shall provide limits not less than Two Million (\$2,000,000) nor more than Six Million Dollars (\$6,000,000) as determined by GRANTEE, the appropriate cost of which shall be reimbursed under FHWA, 23 CFR Part 140, Subpart 1 (April 7, 1992) as amended. The GRANTEE retains the right to self-insure any of its obligations under this provision.

The insurance hereinbefore specified shall be carried until all work required to be performed under the terms of the Agreement is satisfactorily completed and formally accepted. Failure to carry or keep such insurance in force until all work is satisfactorily completed shall constitute a violation of the Agreement.

Section 4.4 Assignment

GRANTEE shall not assign this Agreement or any interest herein without first obtaining COMMISSIONER'S written consent thereto, which consent shall not be unreasonably withheld or delayed.

Section 4.5 Non-Waiver

No covenant or condition of this Agreement can be waived except by the written consent of the parties hereto. Forbearance or indulgence by STATE in any regard whatsoever shall not constitute a waiver of any covenant or condition to be performed by GRANTEE as applicable, and until complete performance by the appropriate party of such covenant or condition, STATE shall be entitled to invoke any remedy available to it under this Agreement or by law or in equity despite such forbearance or indulgence.

Section 4.6 Entire Agreement

This instrument and the appendices identified herein constitute the entire agreement between STATE and GRANTEE and it shall not be amended, altered or changed except by a written agreement signed by all of the parties hereto.

Section 4.7 Force Majeure

The obligations of the parties hereunder shall be subject to force majeure (which shall include strikes, riots, floods, acts of God, and other causes or circumstances beyond the control of the party claiming such force majeure as an excuse for non-performance), but only as long as, and to the extent that, such force majeure shall prevent performance of such obligations.

Section 4.8 Successors and Assigns

All the covenants and obligations of the parties hereunder shall bind their successors and assigns, and any document assigning same will incorporate language whereby assignee will specifically accept and assume all such covenants and obligations.

Section 4.9 Interpretation

The Article and Section headings utilized in this Agreement are for convenience only. This Agreement shall be construed in accordance with and governed by the Laws of the State of New York. All appendices attached hereto are integral parts of this Agreement and the provisions set forth in the Appendices shall bind the parties hereto to the same extent as if such provisions had been set forth in their entirety in the main body of this Agreement. Nothing expressed or implied herein shall give or be construed to give to any person, firm or corporation other than STATE or GRANTEE any legal or equitable right, remedy or claim under or in respect to this Agreement.

Neither this Agreement nor any of the terms hereof may be terminated, amended, supplemented, waived or modified orally, but only by an instrument in writing signed by COMMISSIONER and GRANTEE unless a provision hereof expressly permits any of the parties to effect termination, amendment, supplementation, waiver or modification hereunder, in which such action shall be taken in accordance with the terms of such provision.

Section 4.10 Records and Documents

GRANTEE shall maintain books, records and supporting documents in connection with the work to be accomplished pursuant to this Agreement. For a period of six (6) years from the date of submission of the final bill by GRANTEE or for the operation and maintenance term of the agreement as specified in Section 4.1, whichever is greater, the books, records, bills, vouchers, payrolls, invoices and other documents of every type and description pertaining to the work to be accomplished under this Agreement shall be available to COMMISSIONER or the State Comptroller, or their authorized representatives, for inspection and audit. All costs charged under this Agreement shall be supported by payrolls and time records, material consumption reports, business expense statements, paid invoices and contracts evidencing in detail the nature of the charges for which reimbursement is sought.

a. Extended Records Retention Requirements.

To ensure that NYSDOT meets certain requirements under the Code of Federal Regulations, Part 26, and to ensure that NYSDOT may authorize the use of funds for this project, notwithstanding any other provision of this Agreement to the contrary, the GRANTEE must retain the following documents in connection with the Project:

- i. Documents evidencing the specific assets financed with such proceeds, including but not limited to project costs, and documents evidencing the use and ownership of the property financed with proceeds of the bonds; and
- ii. Documents, if any, evidencing the sale or other disposition of the financed property.

The GRANTEE covenants to retain those records described above, which are used by the GRANTEE in connection with the administration of this Program, for thirty-six (36) years after the date of NYSDOT's final payment of the eligible project cost(s).

Failure to maintain such records in a manner that ensures complete access thereto, for the period described above, shall constitute a material breach of the contract and may, at the discretion of NYSDOT, result in loss of funds allocated, or the GRANTEE's repayment of funds distributed to the GRANTEE under this agreement.

Section 4.11 Termination or Suspension

The STATE shall have the absolute right to terminate this Agreement, and such action shall in no

event be deemed a breach of contract:

- a. If a termination is brought about for the convenience of the STATE and not as a result of unsatisfactory performance on the part of GRANTEE, final payment shall be made based on the actual cost incurred by GRANTEE in accordance with the terms of this Agreement and as verified by audit. In determining the value of the work performed by GRANTEE prior to the termination, no consideration will be given to profit which GRANTEE might have made on the uncompleted portion of the work.
- b. If the termination is brought about as a result of unsatisfactory performance on the part of GRANTEE, the value of the work performed by GRANTEE, prior to termination shall be established by the percent of the amount of such work completed by GRANTEE and acceptable to the STATE, of the total amount of work contemplated by this Agreement.
- c. If, for any reason, the commencement, prosecution or timely completion of the Project is rendered improbable, infeasible, impossible or illegal, or if GRANTEE is determined by the STATE to be in default under its agreement, then the STATE may terminate the Project upon fifteen (15) days prior written notice to GRANTEE. GRANTEE shall have the opportunity to cure such default during this fifteen (15) day notice period.

The COMMISSIONER or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of the GRANTEE. In the event of such suspension, the GRANTEE will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the GRANTEE must comply with the terms of the suspension order. Contract activity may resume at such time as the COMMISSIONER or his or her designee issues a written notice authorizing a resumption of performance under the Contract.

Section 4.12 Severability

If any part of this Agreement is determined to be invalid, illegal or unenforceable, such determination shall not affect the validity, legality or enforceability of any other part of this Agreement and the remaining parts of this Agreement shall be enforced as if such invalid, illegal or unenforceable part were not contained herein.

Section 4.13 Notices

All notices permitted or required hereunder shall be in writing and shall be transmitted either:

- a. via certified or registered United States mail, return receipt requested, at the address here before identified;
- b. by facsimile transmission;
- c. by personal delivery;

- d. by expedited delivery service; or
- e. by e-mail.

Such notices shall be addressed as follows or to such different addresses as the parties may from time-to-time designate:

COMMISSIONER Contact:	«DOT_Contact_Name»	
	«DOT_Contact_Street»	
	«DOT_Contact_City»,	«DOT_Contact_State»
«DOT_Contact_ZIP»		
	Phone: «DOT_Contact_Phone»	
	Fax: «DOT_Contact_Fax»	
	«DOT_Contact_email»	
GRANTEE Contact:	«Grantee_Contact_Name»	
	«Grantee_Contact_Street»	
	«Grantee_Contact_City»,	«Grantee_Contact_State»
«Grantee_Contact_ZIP»		
	Phone: «Grantee_Contact_Phone»	
	Fax: «Grantee_Contact_Fax»	
	«Grantee_Contact_email»	

Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission, upon receipt. The parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this Agreement by giving fifteen (15) days written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under this Agreement. Additional individuals may be designated in writing by the parties for purposes of implementation and administration/billing, resolving issues and problems and/or for dispute resolution.

Section 4.14 Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be original.

Section 4.15 Relationship to Parties

The relationship of the GRANTEE to the STATE is that of any independent contractor, and the GRANTEE, in accordance with its status as such contractor, covenants and agrees that it will conduct itself consistent with such status, that is will neither hold itself out as nor claim to be an

PIN «PIN»

«Grantee»

«Project_Title»

officer or employee of the STATE by reason hereof, and that it will not by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the STATE, including, but not limited to worker's compensation coverage, retirement membership or credit.

Section 4.16 Documents Forming Agreement

This Agreement shall consist of this document and the following attachments:

- Appendix I, Work Schedule;
- Appendix II, Supplemental Title VI Provisions (Civil Rights Act);
- Appendix III, Quarterly Program Reporting Spreadsheet;
- Appendix A, Standard Clauses for all New York State Contracts
- Appendix B, M/WBE-SDVOB and EEO Policy Statement

.

PIN: «PIN»

CONTRACT _____

**«GRANTEE»
SIGNATURE**

Department Certification

“In addition to the acceptance of this contract, I also certify that original copies of this signature page will be attached to all other exact copies of this contract.”

By: _____

Title: _____

Dated: _____

By: _____

For the Commissioner

Dated: _____

State of New York

County of _____

On this _____ day of _____, «Agreement_Year», before me personally came _____ to me known to be the _____ of «Grantee», the entity described in and which executed the foregoing instrument: acknowledged to me that he executed the same, pursuant to authorization by «Grantee».

Notary Public

Dated: _____

ATTORNEY GENERAL'S SIGNATURE

COMPTROLLER'S SIGNATURE

Dated: _____

Dated: _____

PIN «PIN»

«Grantee»

«Project_Title»

PIN: «PIN»

CONTRACT _____

APPENDIX I – WORK SCHEDULE

The Project will consist of the items of work set forth in this Work Schedule, and as more fully described in plans and estimates prepared by or on behalf of the GRANTEE as may be required. Should contract plans, specifications, and estimates be required, they shall be prepared by or on behalf of the GRANTEE and subject to STATE approval and shall be deemed to be included herein as part of the Work Schedule.

Work items to include:

Description	Estimated Cost
TOTAL PROJECT COST	

Individual work elements may be adjusted within the total Agreement amount with prior written approval of the STATE.

The STATE's financial participation is limited to «Grant_Amount_Text» dollars («Grant_Amount») of the project costs. Any overage will be the responsibility of the GRANTEE.

All work identified in this Work Schedule shall be completed no later than «Term_End_Date».

APPENDIX II: SUPPLEMENTAL TITLE VI PROVISIONS (CIVIL RIGHTS ACT)

To be included in all contracts

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

- (1) **Compliance with Regulations:** The contractor shall comply with the Regulation relative to nondiscrimination in Federally-assisted programs of the Department of Transportation of the United States, Title 49, Code of Federal Regulations, Part 21, and the Federal Highway Administration (hereinafter "FHWA") Title 23, Code of Federal Regulations, Part 200 as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- (2) **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin, sex, age, and disability/handicap in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR, section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- (3) **Solicitations for Subcontractors, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin, sex, age, and disability/handicap.
- (4) **Information and Reports:** The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by NYSDOT or the FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to NYSDOT's Office of Civil Rights or FHWA, as appropriate, and shall set forth what efforts it has made to obtain the information.
- (5) **Sanctions for Noncompliance:** In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, NYSDOT shall impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
 - (a.) withholding of payments to the contractor under the contract until the contractor complies, and/or
 - (b.) cancellation, termination or suspension of the contract, in whole or in part.
- (6) **Incorporation of Provisions:** The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The contractor shall take such action with respect to any subcontract or procurement as NYSDOT or the FHWA may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request NYSDOT to enter into such litigation to protect the interests of NYSDOT, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

PIN «PIN»

«Grantee»

«Project_Title»

APPENDIX III – QUARTERLY PROGRAM REPORTING SPREADSHEET

Grant Recipient				
Contract #				
Project Identification #				
Total Award Amount				
Reporting Period				
Table 1. Rate of Expenditure. Record all funds expended for each budget category.				
	State Funds Expended this Reporting Period	Cost-Share Expended this Reporting Period	Cumulative State Funds Expended	Cumulative Cost-Share Expended
Personnel	\$ -	\$ -	\$ -	\$ -
Materials	\$ -	\$ -	\$ -	\$ -
Equipment	\$ -	\$ -	\$ -	\$ -
Contractual	\$ -	\$ -	\$ -	\$ -
Other	\$ -	\$ -	\$ -	\$ -
TOTALS	\$ -	\$ -	\$ -	\$ -
Table 2. Narrative Responses				
Question			Answer	
What actual accomplishments occurred during the reporting period?				
Provide a comparison of actual accomplishments with the anticipated outputs/outcomes and timelines/milestones specified in the project Work Plan.				
If anticipated outputs/outcomes and/or timelines/milestones are not met, why not? Did you encounter any problems during the reporting period which may interfere with meeting the project objectives? If no funds were expended during the Reporting Period, provide an explanation as to why.				
How do you propose to remedy any problems? Identify how and the date you will get back on course to meet the anticipated outputs/outcomes and/or timelines/milestones specified in the project work plan.				
If any cost-share or additional leveraged funds are reported for this Reporting Period in Table 1 above, identify the source of the funds.				
What project activities are planned for the next reporting period?				

APPENDIX B

MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES-SERVICE DISABLED VETERAN OWNED BUSINESSES – EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT

M/WBE, SDVOB, AND EEO POLICY STATEMENT

I, _____, the representative for GRANTEE adopted, or agree to adopt, the following policies with respect to the project being developed or services rendered at _____.

(Insert project/service description)

M/WBE/SDVOB

- (1) Actively and affirmatively solicit bids for contracts and subcontracts from qualified State certified MBEs, WBEs, and SDVOBs, including solicitations to M/WBE and SDVOB contractor associations.
- (2) Obtain a list of State-certified M/WBEs from <https://ny.newnycontracts.com/> and solicit bids from them directly.
- (3) Obtain a list of State certified SDVOBs from <https://online.ogs.ny.gov/SDVOB/search> and solicit bids from them directly.
- (4) Ensure that plans, specifications, requests for proposals, and other documents used to secure bids will be made available in sufficient time for review by prospective M/WBEs and SDVOBs.
- (5) Where feasible, divide the work into smaller portions to enhanced participation by M/WBEs/SDVOBs and encourage joint ventures and other partnerships among M/WBE/SDVOBs contractors to enhance their participation.
- (6) Document and maintain records of bid solicitation, including those to M/WBEs/SDVOBs and the results thereof. This organization will also maintain records of actions that its subcontractors have taken toward meeting M/WBE/SDVOB contract participation goals.
- (7) Ensure that progress payments to M/WBEs/SDVOBs are made on a timely basis so that undue financial hardship is avoided and that, if legally permissible, bonding and other credit requirements are waived, appropriate alternatives developed to encourage M/WBE/SDVOB participation.

EEO

- (a) This organization will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, or marital status, will undertake or continue existing programs of affirmative action to ensure that minority group members are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its workforce on state contracts.
- (b) This organization shall state in all solicitation or advertisements for employees that in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, disability, or marital status.
- (c) At the request of the Sponsor, this organization shall request each employment agency, labor union, or authorized representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability, or marital status and that such union or representative will affirmatively cooperate in the implementation of this organization's obligations herein.
- (d) This organization shall comply with the provisions of the Human Rights Law, all other State, and Federal statutory and constitutional non-discrimination provisions. This organization and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status, or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.
- (e) This organization will include the provisions of sections (a) through (d) of this agreement in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the State contract.

Agreed to this _____ day of _____, 20_____

By _____

Print: _____ Title: _____

_____ (Name of Designated Liaison) is designated as this organization's Minority and Women-Owned Business Enterprise Liaison and Service-Disabled Veteran Owned Business Liaison responsible for administering M/WBE/SDVOB-EEO program.

The GRANTEE agrees that the Standard M/WBE and/or SDVOB Contract Goals for projects let and funded (in whole or in part) with proceeds of this Agreement (Contract # _____) are provided below.

STANDARD CONTRACT GOALS

CATEGORY/CONTRACT TYPE	MBE	WBE	SDVOB
C: Commodities	16.00%	18.00%	6.00%
CC: Construction Consultants (Architectural/Engineering)	19.00%	7.00%	6.00%
CN: Construction	8.00%	15.00%	6.00%
SC: Services/Consultants (Non-Architectural/Engineering)	5.00%	12.00%	6.00%

These Standard Contract Goals are based on the New York State Department of Transportation's (NYSDOT's) Agency M/WBE and SDVOB Goal Plan as a result of programmatic analysis. The plans are available at: <https://www.dot.ny.gov/main/business-center/civil-rights/mwbe-program> and <https://www.dot.ny.gov/main/business-center/civil-rights/sdvob-program>. In furtherance of such goals, the Municipality/Sponsor/Grantee is also required to consider the following statutory factors in all related contracts executed by the Sponsor/Municipality/Grantee:

- (1) the contract and subcontract scope(s) of work,
- (2) the potential subcontract opportunities available in the prime contract,
- (3) the relevant availability data contained within the disparity study with respect to the scope of the contract and potential subcontracting opportunities,
- (4) the number and types of certified minority-owned and women-owned business enterprises (M/WBE) found in the directory of certified minority-owned and women-owned businesses available to perform the related contract work and the number and types of certified service-disabled veteran-owned businesses (SDVOB) found in the SDVOB directory available to perform the related contract work,
- (5) the geographic location of the contract performance,
- (6) the extent to which geography is material to the performance of the contract,
- (7) the ability of certified M/WBEs and SDVOBs located outside of the geographic location of contract performance, notwithstanding the regional location of the certified enterprise, to perform on the GRANTEE's contract,
- (8) the total dollar value of the work required by the GRANTEE's contract in relation to the dollar value of the subcontracting opportunities; and
- (9) the relationship of the monetary size and term of the GRANTEE's contract to the monetary size and term of the project for which the contract is awarded (See 5 NYCRR 142.2 and 9 CRR-NY 252.2(h)).

Pre-Advertisement: As a result of GRANTEE's analysis of the statutory factors in relation to a contract's work scope and circumstances, if the GRANTEE believes a non-standard goal is appropriate and supportable, the GRANTEE may obtain NYSDOT approval by submitting a M/WBE and/or SDVOB Pre-Advertisement Goal Modification Request, with justification, prior to public advertisement of the contract.

Pre-Award: If the GRANTEE receives proposals or bids that do not provide commitments that meet or exceed the advertised goals, the GRANTEE must obtain NYSDOT approval by submitting a M/WBE and/or SDVOB Waiver Request *demonstrating the Contractor's Good Faith Efforts to meet the goals, along with supporting justification, prior to awarding the contract.*

Post Award: If any consultant/contractor fails to attain its M/WBE and/or SDVOB commitment on a contract, the GRANTEE must obtain NYSDOT approval by submitting a M/WBE and/or SDVOB Waiver Request, *demonstrating Good Faith Efforts to meet the goals, along with supporting justification before NYSDOT will distribute final payment of grant proceeds.*

All forms referenced above are available at: <https://www.dot.ny.gov/main/business-center/civil-rights/>. Nothing stated within this or associated document(s) guarantees NYSDOT's approval of a goal modification or goal waiver.

Signature: _____ Title: _____

Name: _____ Date: _____

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

**PLEASE RETAIN THIS DOCUMENT
FOR FUTURE REFERENCE.**

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STANDARD CLAUSES FOR NYS CONTRACTS

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, “the contract” or “this contract”) agree to be bound by the following clauses which are hereby made a part of the contract (the word “Contractor” herein refers to any party other than the State, whether a contractor, licensor, licensee, lessor, lessee or any other party):

1. EXECUTORY CLAUSE. In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

2. NON-ASSIGNMENT CLAUSE. In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State’s previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller’s approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor’s business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State’s prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

3. COMPTROLLER’S APPROVAL. In accordance with Section 112 of the State Finance Law, if this contract exceeds \$50,000 (or \$75,000 for

State University of New York or City University of New York contracts for goods, services, construction and printing, and \$150,000 for State University Health Care Facilities) or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$25,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller’s approval of contracts let by the Office of General Services, either for itself or its customer agencies by the Office of General Services Business Services Center, is required when such contracts exceed \$85,000. Comptroller’s approval of contracts established as centralized contracts through the Office of General Services is required when such contracts exceed \$125,000, and when a purchase order or other procurement transaction issued under such centralized contract exceeds \$200,000.

4. WORKERS’ COMPENSATION BENEFITS. In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers’ Compensation Law.

5. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment, nor subject any individual to harassment, because of age, race, creed, color, national origin, citizenship or immigration status, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status or because the individual has opposed any practices forbidden under the Human Rights Law or has filed a

complaint, testified, or assisted in any proceeding under the Human Rights Law. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

6. WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law.

Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

7. NON-COLLUSIVE BIDDING CERTIFICATION. In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

8. INTERNATIONAL BOYCOTT PROHIBITION. In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2 NYCRR § 105.4).

9. SET-OFF RIGHTS. The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, the "Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the

State's right to discovery in any pending or future litigation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

(a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State

Comptroller, 110 State Street, Albany, New York 12236.

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.

In accordance with Section 312 of the Executive Law and 5 NYCRR Part 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "(a), (b) and (c)" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this clause. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

13. CONFLICTING TERMS. In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

14. GOVERNING LAW. This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

15. LATE PAYMENT. Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

16. NO ARBITRATION. Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

17. SERVICE OF PROCESS. In addition to the methods of service allowed by the State Civil Practice Law & Rules (“CPLR”), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor’s actual receipt of process or upon the State’s receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS. The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits

purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in § 165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES. In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

20. OMNIBUS PROCUREMENT ACT OF 1992. It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority- and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development
Division for Small Business and Technology
Development
625 Broadway
Albany, New York 12245
Telephone: 518-292-5100

A directory of certified minority- and women-owned business enterprises is available from:

NYS Department of Economic Development
Division of Minority and Women's Business
Development
633 Third Avenue 33rd Floor
New York, NY 10017
646-846-7364
email: mwbebusinessdev@esd.ny.gov
<https://ny.newnycontracts.com/FrontEnd/searchcertifieddirectory.asp>

The Omnibus Procurement Act of 1992 (Chapter 844 of the Laws of 1992, codified in State Finance Law § 139-i and Public Authorities Law § 2879(3)(n)–(p)) requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority- and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of

Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

21. RECIPROCITY AND SANCTIONS PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively, codified in State Finance Law § 165(6) and Public Authorities Law § 2879(5)) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 2023, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii.

22. COMPLIANCE WITH BREACH NOTIFICATION AND DATA SECURITY LAWS. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law §§ 899-aa and 899-bb and State Technology Law § 208).

23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW. If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4)(g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the

requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

24. PROCUREMENT LOBBYING. To the extent this agreement is a “procurement contract” as defined by State Finance Law §§ 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law §§ 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.

To the extent this agreement is a contract as defined by Tax Law § 5-a, if the contractor fails to make the certification required by Tax Law § 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law § 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

26. IRAN DIVESTMENT ACT. By entering into this Agreement, Contractor certifies in accordance with State Finance Law § 165-a that it is not on the “Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012” (“Prohibited Entities List”) posted at: <https://ogs.ny.gov/iran-divestment-act-2012>

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law § 165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

27. ADMISSIBILITY OF REPRODUCTION OF CONTRACT. Notwithstanding the best evidence rule or any other legal principle or rule of evidence to the contrary, the Contractor acknowledges and agrees that it waives any and all objections to the admissibility into evidence at any court proceeding or to the use at any examination before trial of an electronic reproduction of this contract, in the form approved by the State Comptroller, if such approval was required, regardless of whether the original of said contract is in existence.

